Dividends Tax replaces Secondary Tax on April 1, 2012

On December 20, 2011, the South African Minister of Finance formally announced, through a notice in the Government Gazette, that on April 1, 2012, the Dividends Tax ("DT") will replace the Secondary Tax on Companies ("STC").

The 10% STC rate is levied on net dividends declared. STC is not a shareholder-level tax, but is instead a tax imposed on the company declaring the dividend. As such the tax does not qualify for treaty relief.

DT generally will be levied on shareholders that receive dividends from companies that are tax resident in South Africa and companies that are not South African tax residents but are listed in South Africa with respect to the listed shares. The rate of DT will be 10%, subject to treaty relief where applicable. For US tax-resident shareholders, this rate may be reduced to 5% under the double tax agreement between South Africa and the United States.

Some dividends may be exempt from DT depending on the recipient’s nature or status. Unutilized STC credits carried forward may also reduce the DT amount for a limited period.

Therefore taxpayers may wish to understand their DT position and ensure that the necessary systems are in place to account for DT and comply with its administrative requirements. US shareholders should consider:
• Whether any of the exempt categories of recipients apply and if so, making the necessary declarations;

• Whether they qualify for relief under the double tax agreement between South Africa and United States and, if so, making the necessary declarations in order to avail of the relief; and

• To the extent possible, determining the STC credits of South African subsidiaries/investments available at March 31, 2012 and tracking them for use with subsequent dividends.

In addition, South African companies should confirm, if they have not already, their 'Contributed Tax Capital' ("CTC") position. This is relevant to the tax treatment of cash repatriations. CTC is a recently introduced, defined tax term (distinct from accounting terminology). A reduction in CTC will not be subject to DT (or currently, to STC).

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